

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED PUBLIC WORKERS,)	CV. NO. 03-00598 DAE-LEK
AFSCME LOCAL 646, AFL-CIO,)	
MUTUAL AID FUND TRUST,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
GARY W. RODRIGUES,)	
)	
Defendant.)	
_____)	

ORDER GRANTING WITHOUT PREJUDICE DEFENDANT’S MOTION FOR
LEAVE TO WITHDRAW DEFENDANT’S MOTION FOR SUMMARY
JUDGMENT

Pursuant to Local Rule 7.2(d), the Court finds this matter suitable for disposition without a hearing. After reviewing Defendant’s motion and the supporting and opposing memoranda, the Court GRANTS WITHOUT PREJUDICE Defendant’s Motion for Leave to Withdraw Defendant’s Motion for Summary Judgment (“Motion”).

On March 28, 2007, Defendant, Gary Rodrigues, filed a Motion for Summary Judgment against Plaintiffs, United Public Workers, AFSCME, Local 646, AFL-CIO, and Mutual Aid Fund Trust. Plaintiffs filed their opposition on

May 4, 2007, to which Defendant replied on May 11, 2007. Three days later, Plaintiffs filed a Motion to Strike Defendant's Reply.

On June 20, 2007, a hearing was held before Magistrate Judge Leslie E. Kobayashi ("Magistrate Judge") on Plaintiffs' Motion for Substitution of Real Party In Interest. The Magistrate Judge granted Plaintiffs' motion to substitute Mr. Steven DeCosta, the Chairperson of Plaintiffs' current Board of Trustees, as the plaintiff and real party in interest. In light of recent revelations that were revealed, the Magistrate Judge granted Defendant leave to continue the trial, to compel discovery and/or modify the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") 16 Scheduling Order, and/or move for a continuance pursuant to Fed. R. Civ. P. 56(f). Defendant's Motion for Summary Judgment is set to be heard on July 23, 2007, and trial is set to commence on August 28, 2007. Accordingly, on July 6, 2007, Defendant filed the instant Motion pursuant to Fed. R. Civ. P. 56(f) so that he may conduct further discovery, after which he would re-file a dispositive motion.

Given the recent events prompting the new disclosures, the Court GRANTS WITHOUT PREJUDICE Defendant's Motion to permit additional discovery. The substance of the discovery may help the Court to determine whether Plaintiffs are entitled to a trial on their claims against Defendant, whether

the former Trustees, Alison Leong and George Yasumoto, and/or other trustees are liable for actions under ERISA, and/or whether the applicable statute of limitations applies.


CONCLUSION

For the reasons stated above, the Court GRANTS WITHOUT PREJUDICE Defendant's Motion.

IT IS SO ORDERED.

DATED: Honolulu, Hawaii, July 9, 2007.





David Alan Ezra
United States District Judge